

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

OCT 26 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DEON FREDERICK SMITH,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 18-70578

D.C. No. 2:11-cr-00442-GMN

District of Nevada
Las Vegas

ORDER

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

The application for authorization to file a second or successive 28 U.S.C. § 2255 motion in the district court is denied as unnecessary. Because the applicant has not filed a prior section 2255 motion in the district court challenging his conviction or sentence in United States District Court for the District of Nevada case no. 2:11-cr-00442-GMN-GWF, the applicant may file a section 2255 motion without obtaining prior authorization. *See* 28 U.S.C. § 2244(b)(3)(A).

We express no opinion as to the merits of the applicant's claims or whether the procedural requirement of 28 U.S.C. § 2255(f) is satisfied.

The Clerk shall transfer the application filed at Docket Entry No. 1, and supplemental filings at Docket Entry Nos. 2 and 3, to the District of Nevada case no. 2:11-cr-00442-GMN-GWF, to be processed as a section 2255 motion. *See Castro v. United States*, 540 U.S. 375, 383 (2003) (setting forth the procedures to

be utilized when characterizing filing as a section 2255 motion). The motion shall be deemed filed in the district court on February 23, 2018, the postmark date on the envelope in which the applicant mailed his application to this court. *See* Fed. R. App. P. 4(c)(1); *Houston v. Lack*, 487 U.S. 266, 270 (1988); *Orona v. United States*, 826 F.3d 1196, 1198-99 (9th Cir. 2016) (AEDPA's statute of limitations period is tolled during pendency of an application).

The Clerk shall also serve this order, the application filed at Docket Entry No. 1, and supplemental filings at Docket Entry Nos. 2 and 3, directly on the chambers of the Honorable Gloria M. Navarro.

Upon transfer of the application, the Clerk shall close this original action.

Any pending motions are denied as moot.

No further filings will be entertained in this case.

**DENIED AS UNNECESSARY; APPLICATION TRANSFERRED to
the district court.**